# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 17751 of 2006

*For Approval and Signature*:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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**SARKHEJ OKAF NAGARPALIKA - Petitioner(s)**
*Versus*
**SMT.KANTABEN JASHVANTBHAI & 1 - Respondent(s)**

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*Appearance* :
MR GM JOSHI for Petitioner
MR DIPAK R DAVE for Respondents

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*CORAM* : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 19/01/2007

## *ORAL JUDGMENT*

*H*eard the learned advocates.

*Rule*. Mr. Dave waives service of rule on behalf of the respondents.

With the consent of the learned advocates, the petition is heard and disposed of *today*.

The petitioner-Sarkhej Okaf Nagarpalika [hereinafter referred to as, "***the Municipality***"] has challenged the common judgment and order dated 21st January, 2006 passed by the Conciliation Officer & Assistant Commissioner of Labour, Ahmedabad in Applications No. IDM Nos.3/2005 to 16/2005.

Mr. Joshi has submitted that the complainant-workmen were engaged by the petitioner-Municipality on daily wages. Their services were never terminated. N*evertheless*, they raised industrial dispute in respect of their alleged termination from service which came to be referred to the Labour Court, Ahmedabad and numbered as Reference [LCA] No. 1548 of 2004. Since then, they moved the Conciliation Officer and raised a charter of demand. Pending the said charter of demand, the concerned workmen filed above referred complaints no. 3 of 2005 to 16 of 2005 under Section 33A of the Industrial Disputes Act, 1947 [hereinafter referred to as, "***the Act***"]. According to the complainant-workmen, pending proceeding before

the Conciliation Officer, their services were terminated without following the due procedure as envisaged by Section 33 of the Act.

The complaints were contested by the Municipality. According to the Municipality, service of the workmen was not terminated; and that the Conciliation Officer had no *jurisdiction* to adjudicate upon the issue. *Nevertheless*, the Conciliation Officer has adjudicated the matter and has held that the services of the complainant-workmen were terminated. *Consequently*, he has made the *impugned* order declaring the alleged termination of service of the complainant-workmen to be illegal and contrary to Section 33 (2)(b) of the Act.

Mr. Joshi has mainly contended that the *impugned* order is made by the Conciliation Officer without the authority of law in *as much as* the Conciliation Officer exercising power under Section 33A (a) of the Act has no *jurisdiction* to adjudicate upon the matters at issue.

Mr. Dave has contested this petition.

Section 33A of the Act is a special provision for adjudication as to whether conditions of service etc., of the workman is changed during pendency of the proceeding. Clause (a) thereof provides, *inter alia*, that in case an employer contravenes the provisions of section 33 during the pendency of proceeding before the Conciliation Officer, an aggrieved employee may make a complaint in writing to such Conciliation Officer and that the Conciliation Officer shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute. A similar *provison* is made in respect of the proceeding pending before an Arbitrator or Labour Court or Tribunal or National Tribunal in clause (b) of Section 33A of the Act. Under the said clause (b) such arbitrator or Court or Tribunal has been *expressly* empowered to *adjudicate* upon the complaint as if it were a dispute referred to or pending before it. The distinction in power conferred upon a Conciliation Officer under clauses (a) of Section 33A of the Act and upon an arbitrator or Court or Tribunal under clause (b) thereof is apparent. *Evidently*, no power of adjudication has

been conferred upon the Conciliation Officer. In my opinion, therefore, in the present case, the Conciliation Officer has *erred* in adjudicating upon the complaints made by the respondents-workmen as if he were an Arbitrator, Court or a Tribunal. The *impugned* order is *thus* made without the authority of law and is illegal.

*In* view of the above discussion, the petition is allowed. The *impugned* judgment and order dated 21st January, 2006 is *quashed* and *set-aside*. The Conciliation Officer shall process the complaints made before him in accordance with law. Rule is made absolute in the above terms. The parties shall bear their own cost.

{Ms. R.M Doshit, J.}

*Prakash**